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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART TWO OF THE SECOND INSTALMENT OF CLAIMS FOR SERIOUS PERSONAL INJURY OR DEATH (CATEGORY "B" CLAIMS)

GE.95-60980

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INTRODUCTION

1. This is the third report that the Panel of Commissioners appointed for claims in category "B" submits to the Governing Council of the United Nations Compensation Commission in accordance with article 37(e) of the Provisional Rules for Claims Procedure (the "Rules").[1] The recommendations in this third report cover those claims contained in Part Two of the second instalment. The second instalment of category "B" claims is comprised of 4,190 claims and has been divided into two parts for organizational purposes. Part One, which consists of 2,286 claims, was the subject of the Panel's second report[2] that was approved by the Governing Council in Decision 26 on 14 December 1994.[3] Part Two is comprised of 1,904 claims.

2. Claims in Part Two were reviewed by the Panel at its sessions on 22-25 November 1994, 15-20 December 1994 and 17-19 January 1995. These sessions were held in Geneva at the headquarters of the secretariat and were conducted in private.[4] The secretariat staff members attended all of the sessions of the Panel and provided support as required. When necessary, the Panel was assisted by an experienced medical expert that the Executive Secretary appointed to assist the Panel and the secretariat in the review of category "B" claims.[5]

3. The principles established by the Panel in the first[6] and second reports, approved by the Governing Council in Decisions 20[7] and 26, respectively, were applied to the claims in Part Two of the second instalment. This third report raises the legal issues that were not addressed in the Panel's previous reports; it should be read in conjunction with the first and second reports. The annexes to this third report list the individual recommendations made by the Panel for each claim.

I. LEGAL ISSUES

A. Non-Iraqi member of Iraqi armed forces

4. The Panel had before it a claim filed by a non-Iraqi national for a serious personal injury suffered during the relevant time period while on duty as a member of the Iraqi

armed forces. The Panel recalls that the United Nations Compensation Commission was established to indemnify those who suffered losses resulting from Iraq's unlawful invasion and occupation of Kuwait. Accordingly, the Panel declines to recommend compensation for a member of the Iraqi armed forces, even in cases where the claimant does not have Iraqi nationality.

B. Death of a potential claimant and the right of his heirs to claim

5. Part Two included a claim filed by the heirs of a father for the death of his child. In this particular case the son was killed during an air raid in February 1991. The father of the deceased died in November 1991 without having made a claim to the UNCC for the death of his son. A claim was subsequently filed by the father's heirs for the death of the son. The Panel holds that a claim cannot be made by the heirs on behalf of the father, since the latter, while still alive, had not presented a claim for his son's death.

II. OTHER ISSUES

A. Death claims when family members have submitted separate claim forms for the same deceased

6. The Panel notes that included in the claims recommended for compensation in Part Two are some claims where the maximum amount of $US 10,000.00 has already been awarded to family members who submitted claims in the first instalment or in Part One of the second instalment. Successful claimants whose claims are reported in Part Two are entitled to receive compensation on an equal basis from the maximum amount awarded to family members in the first instalment or Part One of the second instalment even though "zero" amounts have been stated with respect to their claims in the annexes attached to this report.[8]/

B. Claims where additional information was requested

7. In the first instalment the Panel had before it a number

of claims for death where no proof of family relationship had been submitted. The Panel requested that the relevant Governments provide additional documentation showing the family relationship between the claimant and the deceased. Three Governments forwarded the documentation as requested, and in its second report the Panel recommended that these claims be awarded compensation. Subsequent to the issuance of the Panel's second report, a fourth Government also submitted the requested evidence for 12 claims. The Panel accordingly recommends that compensation be awarded for these 12 claims from the first instalment that are listed in a separate annex. The amounts recommended for each consolidated claim submission of this Government are the following:

KW/00007/01B	$US 10,000.00
KW/00014/02B	$US 5,000.00
KW/00144/03B	$US 32,500.00

8. Furthermore, in Part One of the second instalment, the Panel requested additional documentation in 93 claims, as documentation presented in such cases was insufficient for the Panel to make a recommendation on the claim. The Panel has so far received additional documentation for one claim. The Panel recommends compensation for this claim that is referred to in a separate annex. The amount recommended by consolidated claim submission is:

KW/00191/4B	$US 10,000.00

C. Application of article 41 of the Rules

9. The Panel was informed by the secretariat that some computational errors had occurred in the amounts awarded for claims covered in the first report. These errors were brought to the attention of the Executive Secretary by Governments in

accordance with article 41 of the Rules.[9]/ The Panel notes that these errors occurred mainly due to the fact that separate claim forms had been filed by family members for the same deceased, and that these separate claim forms were often included in different consolidated claim submissions, thereby making it difficult for the secretariat to locate all of the related claim forms so as to apply the $US 10,000.00 ceiling pursuant to Decision 1 of the Governing Council.[10]/ The Panel recommends that the amounts in three consolidated claim submissions be rectified. The correct amounts for each individual claim in these three consolidated claim submissions are specified in the attached annexes that are being provided separately to the respective Governments. The correct amounts for each of the three consolidated claim submissions at issue are as follows:

Consolidated Claim Submission	Correct Amount	Previous Amount Awarded	Difference
JO/00103/01B	$US 987,500.00	$US 982,500.00	$US 5,000.00
KW/00144/03B	$US 1,202,500.00	$US 1,222,500.00	$US (20,000.00)
TH/00095/01B	$US 12,500.00	$US 10,000.00	$US 2,500.00

The Panel recommends that the difference in amounts resulting from the computational errors in the first report be added to or subtracted from the total amounts awarded to each of the three Governments with respect to the claims covered in this third report.

III. RECOMMENDATIONS TO THE GOVERNING COUNCIL

10. The recommendations for each claim are contained in the annexes to this report. These annexes contain the claimant's name, the UNCC claim number, the national claim number, the deceased's or the injured person's name, and the Panel's recommendation for each element of the claim. The annexes are organized by consolidated claim submissions pursuant to article 37(e) of the Rules. The annexes are being provided to each

respective Government or international organization separately due to their confidentiality.

A. Overview of the claims in Part Two of the second instalment

11. The following is a breakdown of the claims by country by type of loss. The total number of claims may be higher than the total number of claim forms submitted by Governments since one claim form may have been filed for more than one serious personal injury or for more than one death.

Breakdown of the Number of Claims by Country			
Second Instalment: Part Two			
Country	Serious Personal Injury	Death	Total
Algeria	-	1	1
Australia	2	-	2
Bahrain	2	-	2
Canada	1	1	2
Egypt	211	225	436
France	1	-	1
Germany	1	-	1
India	5	2	7
Israel	84	17	101
Italy	1	-	1
Jordan	67	56	123
Kuwait	592	165	757
Lebanon	12	22	34
Malaysia	1	-	1
Mauritius	2	-	2
Morocco	2	2	4
Pakistan	-	3	3
Philippines	50	18	68
Poland	-	2	2
Sri Lanka	2	2	4

Country	Serious Personal Injury	Death	Total
Sudan	40	61	101
Syria	169	18	187
Tunisia	2	3	5
Ukraine	-	1	1
United Kingdom	16	2	18
United States	5	-	5
Yemen	16	71	87
UNDP Jerusalem	-	1	1
UNDP Washington	5	-	5
UNHCR Geneva	1	1	2
UNRWA Vienna	1	-	1
Total	1291	674	1965

B. Claims for which compensation is recommended

12. The Panel recommends that compensation be awarded for 811 claims in Part Two of the second instalment. As noted above, the recommendations on the claims are presented for each country by consolidated claim submission. The amounts of compensation with respect to each consolidated claim submission are as follows:

Total Amount Awarded by Consolidated Claim Submission		
Second Instalment: Part Two		
Country	Consolidated Claim Submission	Total Amount Awarded
Algeria	DZ/448/1B	$10,000.00
Australia	AU/653/5B	$2,500.00
Bahrain	BH/890/5B	$0.00
	BH/965/6B	$0.00
Canada	CA/942/3B	$0.00

Country	Consolidated Claim Submission	Total Amount Awarded
Egypt	EG/542/5B	$707,500.00
	EG/827/11B	$2,500.00
	EG/874/12B	$12,500.00
	EG/906/15B	$2,500.00
	EG/918/13B	$10,000.00
	EG/932/14B	$0.00
	EG/960/16B	$10,000.00
	EG/1007/17B	$60,000.00
France	FR/446/7B	$2,500.00
Germany	DE/552/5B	$2,500.00
India	IN/547/11B	$5,000.00
	IN/966/14B	$0.00
	IN/1006/15B	$2,500.00
Israel	IL/287/1B	$290,000.00
	IL/1015/2B	$17,500.00
Italy	IT/528/4B	$2,500.00
Jordan	JO/437/3B	$112,500.00
	JO/599/4B	$17,500.00
	JO/763/5B	$65,000.00
	JO/893/6B	$32,500.00
Kuwait	KW/546/8B Part Z	$0.00
	KW/593/9B	$122,500.00
	KW/701/10B	$230,000.00
	KW/802/11B	$147,500.00
Lebanon	LB/458/1B	$100,000.00
Malaysia	MY/769/2B	$0.00
Mauritius	MU/993/5B	$0.00
Morocco	MA/483/3B	$5,000.00
	MA/524/4B	$0.00
Pakistan	PK/567/4B	$10,000.00
	PK/776/5B	$10,000.00

Country	Consolidated Claim Submission	Total Amount Awarded
Philippines	PH/507/5B	$0.00
	PH/540/2B	$145,000.00
	PH/556/3B	$2,500.00
	PH/677/6B	$2,500.00
	PH/809/4B	$2,500.00
	PH/987/7B	$0.00
Poland	PL/481/2B	$0.00
Sri Lanka	LK/442/3B	$2,500.00
	LK/560/4B	$2,500.00
	LK/785/5B	$0.00
	LK/975/6B	$5,000.00
Sudan	SD/293/1B	$265,000.00
Syria	SY/288/1B	$137,500.00
Tunisia	TN/472/2B	$20,000.00
Ukraine	UA/490/1B	$5,000.00
United Kingdom	GB/494/15B	$2,500.00
	GB/535/16B	$15,000.00
	GB/690/17B	$2,500.00
	GB/1000/18B	$2,500.00
United States	US/536/7B	$2,500.00
	US/979/8B	$7,500.00
Yemen	YE/559/1B	$290,000.00
UNDP Jerusalem	PP/683/2B	$0.00
UNDP Washington	27/571/1B	$5,000.00
UNHCR Geneva	23/587/1B	$0.00
UNRWA Vienna	PP/1014/3B	$2,500.00
Total		$2,912,500.00

C. Claims for which no compensation is recommended

13. The Panel recommends that no compensation be awarded in 325 claims in Part Two of the second instalment.

D. Claims transferred to the category "C" Panel of Commissioners ("transferred" claims)

14. The Panel requests that the Executive Secretary transfer 126 claims in Part Two of the second instalment to the Panel of Commissioners dealing with the category "C" claims for mental pain and anguish, in accordance with article 32, paragraph 3 of the Rules.

E. Eligible claims for which no compensation is recommended at this stage ("suspended" claims)

15. The Panel "suspends" the recommendations on 515 claims included in Part Two of the second instalment for serious personal injuries on behalf of persons that are asserted to be still in detention in Iraq, and for death claims filed for "missing persons". No award of compensation is recommended at this stage for these claims.

F. Claims that require further documentation ("other" claims)

16. The Panel requests that additional information be provided in 189 cases in Part Two of the second instalment, as documentation presented in such cases is insufficient for the Panel to make an informed recommendation on the merits of the claim. The annexes indicate the specific documentation required under the letter codes M, L, F and O. These codes demonstrate areas where further documentation is required. An explanation as to the type of additional information requested pursuant to each of these codes is being separately provided to each respective Government or international organization.

G. Summary of recommendations

17. The following table summarizes by country all the recommendations made by the Panel in this third report:

Summary of Recommendations by Country						
Country	Claims Recommended for Payment	Claims Not Recommended for Payment*	Transferred Claims	Suspended Claims	Other Claims	Total Amount Awarded
Algeria	1	-	-	-	-	$10,000.00
Australia	1	1	-	-	-	$2,500.00
Bahrain	-	-	2	-	-	$0.00
Canada	-	-	-	-	2	$0.00
Egypt	206	130 [5]	-	-	96	$805,000.00
France	1	-	-	-	-	$2,500.00
Germany	1	-	-	-	-	$2,500.00
India	3	2 [1]	-	-	1	$7,500.00
Israel	94	4	-	-	3	$307,500.00
Italy	1	-	-	-	-	$2,500.00
Jordan	59	29 [5]	1	11	18	$227,500.00
Jordan****	-	-	-	-	-	$5,000.00
Kuwait	201	48	4	503	1	$500,000.00
Kuwait**	11	-	-	-	-	$47,500.00
Kuwait***	1	-	-	-	-	$10,000.00
Kuwait****	-	-	-	-	-	($20,000.00)
Lebanon	19	12	2	-	1	$100,000.00
Malaysia	-	-	1	-	-	$0.00
Mauritius	-	0[1]	1	-	-	$0.00
Morocco	2	1	-	-	1	$5,000.00
Pakistan	2	-	-	-	1	$20,000.00
Philippines	44	17 [2]	-	1	4	$152,500.00
Poland	-	2	-	-	-	$0.00
Sri Lanka	3	-	-	-	1	$10,000.00
Sudan	66	16 [1]	-	-	18	$265,000.00
Syria	42	3 [5]	104	-	33	$137,500.00
Thailand****	-	-	-	-	-	$2,500.00
Tunisia	4	-	-	-	1	$20,000.00
Ukraine	1	-	-	-	-	$5,000.00
United Kingdom	8	1	8	-	1	$22,500.00
United States	4	1	-	-	-	$10,000.00
Yemen	45	35	-	-	7	$290,000.00
UNDP Jerusalem	-	1	-	-	-	$0.00

Country	Claims Recommended for Payment	Claims Not Recommended for Payment*	Transferred Claims	Suspended Claims	Other Claims	Total Amount Awarded
UNDP Washington	2	-	3	-	-	$5,000.00
UNHCR Geneva	-	2	-	-	-	$0.00
UNRWA Vienna	1	-	-	-	-	$2,500.00
Total	823	305 [20]	126	515	189	$2,957,500.00

* Numbers in brackets indicate duplicate claims. Where it was discovered that some category "B" claims had been submitted twice by the same claimant, the Panel made its recommendation on the merits with respect to only one of the claims, and the duplicate claim was not recommended for compensation.

** Claims from the first instalment where additional documentation had been requested by the Panel (see supra paragraph 7).

*** Claims from Part One of the second instalment where additional documentation had been requested by the Panel (see supra paragraph 8).

**** Corrections to claims in the first instalment (see supra paragraph 9).

18. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 19 January 1995

(Signed) Mr. Mohamed Bennouna
Chair

(Signed) Mrs. Denise Bindschedler-Robert
Commissioner

(Signed) Ms. Fang Ping
Commissioner

Notes

[1]/ S/AC.26/1992/10, article 37(e): "Each Panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim."

[2]/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Claims for Serious Personal Injury or Death (Category 'B' Claims)," S/AC.26/1994/4, (the "second report").

[3]/ "Decision Concerning Part One of the Second Instalment of Claims for Serious Personal Injury or Death (Category 'B' Claims) Taken by the Governing Council of the United Nations Compensation Commission at its 48th Meeting, held on 14 December 1994 in Geneva," S/AC.26/Dec.26 (1994), ("Decision 26").

[4]/ Rules, article 33, paragraph 2; article 30, paragraph 2.

[5]/ Dr. Marcel Dubouloz, former Deputy Medical Director of the Medical Division of the International Committee of the Red Cross, Secretary General of the International Society of Disaster Medicine.

[6]/ "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category 'B' Claims)," S/AC.26/1994/1, (the "first report").

[7]/ "Decision Concerning the First Instalment of Claims for Serious Personal Injury or Death (Category 'B' Claims) Taken by the Governing Council of the United Nations Compensation Commission at its 43rd Meeting, held on 26 May 1994 in Geneva," S/AC.26/Dec.20 (1994), ("Decision 20").

[8]/ See also paragraphs 42-47 of the second report.

[9]/ Rules, article 41(1): "Computational, clerical, typographical or other errors brought to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports, will be reported by the Executive Secretary to the Governing Council."

[10]/ "Criteria for Expedited Processing of Urgent Claims," S/AC.26/1991/1, ("Decision 1").

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REPORT AND RECOMMENDATIONS MÀDE BY THE PANEL OF COMMISSIONERS CONCERNING THE SECOND INSTALMENT OF CLAIMS FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

GE.95-60986

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INTRODUCTION

This second report contains the recommendations to the Governing Council of the Panel of Commissioners (the "Panel") appointed to review claims for departure from Iraq or Kuwait ("category 'A' claims") concerning the second instalment of claims,[1] pursuant to article 37 (e) of the Provisional Rules for Claims Procedure (the "Rules").[2] Category "A" claims are among the "most urgent claims" for which the Governing Council Decision on "Criteria for Expedited Processing of Urgent Claims"[3] has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief". This report makes compensation recommendations for the category "A" claims reviewed in the second instalment of claims submitted to the Panel by the Executive Secretary of the Commission. In considering these claims, the Panel has, in accordance with article 31 of the Rules, applied Security Council resolution 687 (1991), the criteria

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[1] The recommendations concerning the first instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", (S/AC.26/1994/2), (hereinafter referred to as the "first report"). General information regarding the establishment of the United Nations Compensation Commission in the aftermath of the Gulf crisis as well as the composition of the Panel are contained in the introduction to the first report.

[2] S/AC.26/1992/10, article 37 (e) requires that "[e]ach Panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim".

[3] S/AC.26/1991/1, (hereinafter referred to as "Decision 1").

established by the Governing Council for this category of claims and other pertinent decisions of the Governing Council.

As described in the first report, the Panel held three preparatory meetings with the secretariat of the Commission to discuss the methodology and procedures used by the secretariat in the processing of the first instalment of category "A" claims. The same methodology and procedures have been applied to the second instalment of claims. The Panel held one substantive session to review claims in the second instalment from 30 January to 1 February 1995.

I. CATEGORY "A" CLAIMS IN GENERAL

Category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991. For a more detailed description of the nature of category "A" claims, the Claim Form "A" and the amounts that can be claimed under this category, reference is made to Part I of the first report.

II. EVIDENTIARY STANDARD APPLICABLE TO CATEGORY "A" CLAIMS

The evidentiary standard applicable to category "A" claims is stated in Decision 1 and more specifically in article 35 (a) of the Rules. As is explained more fully in Part IV.D., infra, the overall majority of the claims in the second instalment were verified to meet this standard by way of computerized matching of the claims in question against an Arrival/Departure Database that was developed from documentary evidence such as Arrival/Departure Records made available by various Governments and international organizations. The Panel therefore was not required to review evidence attached to those claim forms. For reasons explained below (see Part III.B., infra), however, for a limited number of claims in the second instalment documentary evidence attached to the forms was reviewed for verification purposes.

III. METHODOLOGY FOR PROCESSING CATEGORY "A" CLAIMS

A. Several methods

Part III.A. of the first report sets out the different methods envisaged by the Rules for the verification of category "A" claims, i.e., matching, sampling and additional verification "as circumstances warrant". As in the first instalment, the computerized matching of the claims against the Arrival/Departure Database has been the methodology primarily relied upon for the verification of claims in the second instalment. For a number of claims, the evidence attached to the forms was reviewed manually (for more details see Part III.B., infra).

A first matching run was performed for all claims that were filed with the Commission before 1 July 1993. A second matching run was subsequently performed for all claims the verification of which had not been attempted in the context of the first instalment, i.e., claims filed later than 1 July 1993. (For the number of claims and the country-wise composition comprising the first instalment, see Part III.B. of the first report). Also included in the second matching run were claims that were filed prior to 1 July 1993 but which were affected by technical deficiencies preventing them from being considered for the first instalment, provided that such deficiencies had been remedied in time to permit inclusion in the second matching run. Claims included in the second matching run were verified against two additional sets of Arrival/Departure Records that had not been used in the first run because of technical problems, i.e., those provided by the Governments of Iran and Jordan.

B. The second instalment of category "A" claims

In determining the total number of claims and the country-wise composition comprising the second instalment of category "A" claims the Panel applied the general guidelines set forth by the Governing Council for the composition of the several instalments of category "A" claims and took into account various considerations

such as the total number of claims submitted by different countries, the dates of their submission, the estimate of time it would take to process claims even through expedited procedures, and the estimate of the funds that might be available to meet the second instalment of category "A" claims. The Panel's recommendations as set out in Part V, infra, for the payment of claims listed in the Summary Table attached to this report, are made according to such criteria and procedures, as elaborated below.

The Panel reviewed and recommends for payment in the second instalment:

(a) all of the claims verified in the first matching run that were not included in the first instalment (see Part III.B. of the first report);

(b) from the second matching run, up to 200 claims for each country (or the total number of claims matched if the latter was less than 200), applying a criterion similar to the one approved by the Governing Council for the composition of the first instalment (see Part III.B.(b) of the first report);

(c) for each country, 50 per cent of the claims exceeding 200 that were verified in the second matching run against the records provided by the Governments of Iran and Jordan;

(d) for those countries that had submitted claims within the established deadlines but where neither the first nor the second matching runs yielded any verified claims, a number of claims sufficient to attain an equitable representation in the second instalment of such countries, based on a manual review of the evidence attached to the claims in question (see supra, Part III. A.).

The number of claims per submitting country that the Panel recommends for payment in the context of this instalment is listed

in the column "Number of Claims Recommended for Payment" of the Summary Table attached to this report.

IV. THE PROCESSING OF THE SECOND INSTALMENT OF CLAIMS

A. Processing by the secretariat

All of the claims contained in the second instalment were subjected to the processes described in Part IV.A. of the first report.

B. Validation

As was the case for the claims contained in the first instalment, before matching the claims in the second instalment against the Arrival/Departure Database, the claims were passed through a preliminary computerized screening process hereinafter referred to as "validation". The purpose of validation is threefold. First, some aspects of the format of the claims are checked. Second, the Iraqi claimants are separated from the non-Iraqi claimants. Third, the validation programme checks whether there are any duplicate claims in the "A" claims category.

As explained more fully in Part IV.B.3. of the first report, the Panel instructed the secretariat to analyze further the claims that have been identified and separated as "possible duplicates" to confirm whether such claims are indeed duplicates. The secretariat is in the process of examining those claims. In view of the considerations outlined in this Part of the first report, the Panel recommends that Governments keep an accurate record of the persons to whom amounts awarded are paid in order to minimize the risk of multiple recovery on the basis of a duplicate "A" claim.

C. Other issues

1. Departure date outside the jurisdictional period

As in the first instalment, claimants in the second instalment who stated in their claim form a "date of departure" outside the period from 2 August 1990 to 2 March 1991, were deemed by the Panel to have misinterpreted the meaning of the term "date of departure" and, therefore, were not dismissed on the basis of such a date if the claimants in question nevertheless matched against an Arrival/Departure Record establishing departure within the jurisdictional period.

2. Limitations on claiming in more than one category

The Governing Council's decision on "Multi-Category Claims"[4] establishes that claimants who have selected a higher amount under category "A" (US$ 4,000 or 8,000) and have also filed a claim in category "B", "C" or "D", will be deemed to have selected the corresponding lower amount under category "A". Pursuant to paragraph 2 of the Governing Council Decision on "Priority of Payment and Payment Mechanism",[5] successful individual claimants whose category "A" claims are being so adjusted will only receive an initial payment of US$2,500; successful claimants whose category "A" family claims are being so adjusted will, after an initial payment of US$ 2,500, receive only an additional payment under category "A" of US$ 2,500 in the allocation stage of payments described in paragraph 6 of Decision 17. No later than at the beginning of the allocation stage of payments, the secretariat will

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[4] S/AC.26/Dec.21 (1994), (hereinafter referred to as "Decision 21").

[5] S/AC.26/Dec.17 (1994), (hereinafter referred to as "Decision 17").

inform governments as to which of its claimants are affected by these limitations.[6]

The Panel recalls that attention was drawn in Part IV.C.2. of the first report to the problem presented by claimants who had filed category "A" claims for US$ 4,000 or US$ 8,000 and by so doing had expressly agreed not to file a claim in any other category, but nevertheless had also filed a claim under category "B", "C" or "D".

It is the Panel's view that the strict application of the applicable legal principles would require that a claimant must be bound by his/her agreement that once he/she submitted a category "A" claim for US$ 4,000 or US$ 8,000, he/she would not submit a claim in any other category, and that if the claimant had nevertheless submitted claims in any other category, then the legal conclusion should be that the filing of a claim in any other category would be treated as invalid.

The Governing Council, on the basis of "further background information from the secretariat on the circumstances appearing to give rise to multi-category filings in claim categories 'A', 'B', 'C' and 'D'", by its Decision 21 determined that a claimant who had filed a category "A" claim for US$ 4,000 or US$ 8,000 and who had also filed a claim in another category, should be deemed to have filed a category "A" claim for US$ 2,500 or US$ 5,000, thus in effect retrospectively amending the "A" claim forms submitted for

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[6] The Panel notes the decision of the Governing Council on "Multi-Category Departure Claims" (S/AC.26/Dec.24 (1994), that addresses the situation where claimants filing a claim in category "A" had also filed departure claims in category "C" and/or "D". Since the application of the remedial measures included in this decision will take place in conjunction with the processing of claims in category "C" and/or "D", the Panel has made its recommendations for category "A" claims independent of the fact as to whether or not category "A" claimants have also filed departure claims in category "C" and/or "D".

US$ 4,000 or US$ 8,000 without such amendment having been requested by either the Governments or the claimants concerned.

In the view of the Panel, the resultant situation operates to the detriment of claimants who submitted category "A" claims and acted in accordance with the rules which required them to agree not to file claims in any other category. By so abiding by the rules these claimants have been prejudiced in two ways.

Claimants who were not eligible to file category "B", "C" or "D" claims since they had filed category "A" claims for US$ 4,000 or US$ 8,000, but nevertheless had filed such claims, were now having their "B", "C" or "D" claims made eligible, which would increase the number of "B", "C" or "D" claims competing for payment out of the same funds, reducing pro tanto the funds available to those who had respected the rules.

Claimants who had respected the rules would be further prejudiced as they would be denied the opportunity of filing a category "B", "C" or "D" claim and would be put in the position of receiving the subsequent payment at the same time as those who had not abided by the rules.

The Panel is of the view that the Governing Council may wish to review this matter. The Panel would recommend that the legitimate interests of category "A" claimants who had filed claims for US$ 4,000 or US$ 8,000 and had abided by the rules by not filing in any other category should be protected, and that a just balance between such claimants and those who will benefit from the application of Decision 21 should be maintained.

In principle, a fair solution would be for all claimants who had submitted category "A" claims for US$ 4,000 or US$ 8,000 but had not submitted claims in any other category to be allowed an opportunity to amend their category "A" claims so as to reduce the claimed amount to US$ 2,500 or US$ 5,000 and to lodge a category "B", "C" or "D" claim within a reasonable period to be determined by the Council. However, should this solution not be considered

feasible, then the Panel would recommend that all successful claimants who had submitted category "A" claims for US$ 4,000 or US$ 8,000 but had not submitted claims in any other category, receive full payment of US$ 4,000 or US$ 8,000, pursuant to the terms of Decision 17, before any additional amounts beyond the initial US$ 2,500 are paid to the category "A" claimants who submitted claims for US$ 4,000 or US$ 8,000 but had also filed claims in other categories.

3. Interest

On the basis of the considerations formulated in Part IV.C.3. of the first report, the Panel reiterates its recommendation that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council Decision on "Awards of Interest".[7] With respect to category "A" claims, the phrase "the date the loss occurred" in Decision 16 should be interpreted to be 2 August 1990.

D. Computerized verification of category "A" claims in the second instalment

1. Departure from Kuwait and Iraq during the Gulf crisis

With regard to the background information on the number of departees from the Persian Gulf region and the circumstances of their departure, reference is made to Part IV.D.1. of the first report.

2. The computerized matching

The second instalment of claims was subjected to the same computerized matching process that had been used for the verification of the first instalment of category "A" claims. The goal of this computerized verification process was to determine

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[7] S/AC.26/1992/16, (hereinafter referred to as "Decision 16").

whether a given claimant appears in one or more of the records that constitute the Arrival/Departure Database and which the Panel found to establish departure from Kuwait or Iraq during the relevant jurisdictional period. In order to achieve this goal, the secretariat used the same specially designed software as in the first instalment. The general characteristics of this computerized process and the software supporting it were reviewed by and met the approval of the Panel; they are described in detail in Part IV.D.4. of the first report.

3. The Arrival/Departure Records

The Arrival/Departure Records used by the secretariat for the computerized verification of claims in the second instalment include all those utilized for the verification of claims in the first instalment and referred to in Part IV.D.2. of the first report. In addition, a number of Arrival/ Departure Records provided by the Governments of Iran and Jordan which had not been utilized for the first matching run, were used to verify claims in this instalment.

4. Evidentiary value of the various records

The evidentiary value of the records provided by the Governments of Iran and Jordan was determined by the Panel on the basis of the same considerations made with respect to the records used for the verification of claims in the first instalment. The records provided by these two Governments, in some instances in conjunction with other materials, were found to show departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991.

The Panel, thus, determined that a claimant who had matched against one or more of these records met the applicable evidentiary requirements and was entitled to compensation.

V. RECOMMENDED COMPENSATION FOR THE SECOND INSTALMENT OF CATEGORY "A" CLAIMS

Pursuant to article 37 (e) of the Rules, the Panel hereby presents its final recommendations on the claims comprising the second instalment of category "A" claims.

Having considered the results of the verification of claims accomplished through computerized matching and, where necessary, through the review of documentary evidence submitted with claim forms, and further having considered all relevant circumstances and materials available with the Commission, the Panel recommends for payment of compensation 162,720 claims submitted by 64 countries and by the United Nations Development Programme (UNDP) and the United Nations High Commissioner for Refugees (UNHCR). The total recommended amount of compensation for the second instalment comes to US$ 626,989,500.

The Panel records that claims that were verified through computerized matching but that could not be recommended for payment due to the limits as to number and country-wise composition of the second instalment are expected to receive due consideration when subsequent instalments are processed for payment of compensation. Claims that could not be included in the second instalment due to such factors as defective format or possible duplication are also expected to receive consideration when subsequent instalments are processed.

The attached Summary Table lists on a country-by-country basis the number of claims for which payment is recommended and the total recommended amount of compensation. A table containing the breakdown of the amounts to be paid to each individual claimant

will be provided to each respective country and international organization separately.

Geneva, 1 February 1995

(signed) Kamal Hossain
Chairman

(signed) Matti Pellonpää
Commissioner

(signed) Rafael Rivas-Posada
Commissioner

Annex

CATEGORY "A" CLAIMS RECOMMENDED FOR PAYMENT
IN THE SECOND INSTALMENT (SUMMARY TABLE)

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US $)
Algeria	8	47,500.00
Australia	18	91,500.00
Austria	11	49,000.00
Bahrain	11	52,000.00
Bangladesh	13,269	51,523,000.00
Belgium	3	14,500.00
Benin	1	2,500.00
Bosnia and Herzegovina	12	48,000.00
Brazil	12	52,000.00
Bulgaria	71	323,500.00
Canada	159	721,500.00
China	6,293	25,159,000.00
Croatia	64	251,000.00
Cyprus	5	15,000.00
Czech and Slovak F.R.[8]	12	55,000.00
Czech Republic	1	4,000.00
Denmark	1	5,000.00
Egypt	54,542	142,529,000.00

[8] These claims were submitted before the Czech and Slovak Federal Republic ceased to exist. Awards of compensation will have to be paid to the Governments of the Czech Republic and the Slovak Republic, respectively, pursuant to an agreement between the two Governments.

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US $)
Ethiopia	10	31,000.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	200	816,000.00
Finland	2	10,000.00
France	41	157,500.00
Germany	13	57,000.00
Ghana	2	8,000.00
Greece	5	28,500.00
Hungary	10	43,000.00
India	12,611	50,158,500.00
Iran	8,986	52,977,500.00
Ireland	10	33,500.00
Italy	32	91,500.00
Japan	12	63,500.00
Jordan	19,762	95,988,500.00
Kenya	3	9,000.00
Korea, Republic of	18	80,500.00
Kuwait	17,149	87,259,500.00
Lebanon	10	25,000.00
Malaysia	6	21,500.00
Morocco	23	68,000.00
Nepal	11	41,000.00
Netherlands	12	48,000.00
Nigeria	2	7,500.00
Pakistan	4,745	19,835,500.00

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US $)
Philippines	1,453	5,779,500.00
Poland	10	39,500.00
Portugal	1	5,000.00
Romania	10	25,000.00
Russian Federation	1,058	4,296,000.00
Senegal	14	89,500.00
Slovakia	1	4,000.00
Slovenia	1	4,000.00
Somalia	27	79,000.00
Spain	9	50,000.00
Sri Lanka	19,333	77,284,000.00
Sudan	130	500,000.00
Syria	4	10,000.00
Thailand	10	40,000.00
The former Yugoslav Repuplic of Macedonia	10	40,000.00
Tunisia	56	188,000.00
Turkey	38	154,500.00
Ukraine	1	4,000.00
United Kingdom	50	168,500.00
United States	59	263,500.00
Vietnam	2,134	8,540,000.00
Yemen	86	352,000.00
UNDP (Algeria)	1	8,000.00
UNDP (Jerusalem)	11	52,500.00
UNDP (Yemen)	13	57,500.00

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US $)
UNDP (Washington)	10	44,000.00
UNHCR (Bulgaria)	3	11,500.00
UNHCR (Canada)	13	74,500.00
UNHCR (Geneva)	3	15,500.00
UNHCR (Iran)	3	7,500.00
Total	162,720	626,989,500.00

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COMPENSATION COMMISSION

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF CLAIMS FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

GE.95-61425

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INTRODUCTION

1. This third report contains the recommendations to the Governing Council of the Panel of Commissioners (the "Panel") appointed to review claims for departure from Iraq or Kuwait ("category 'A' claims") concerning the third instalment of claims,[1] pursuant to article 37 (e) of the Provisional Rules for Claims Procedure (the "Rules").[2] Category "A" claims are among the "most urgent claims" for which the Governing Council Decision on "Criteria for Expedited Processing of Urgent Claims"[3] has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief". This report makes compensation recommendations for the category "A" claims reviewed in the third instalment of claims submitted to the Panel by the Executive Secretary of the United Nations Compensation Commission (the "Commission"). In considering these claims, the Panel has, in accordance with article 31 of the Rules, applied Security Council resolution 687 (1991), the criteria established by the Governing Council for this category of claims and other pertinent decisions of the Governing Council.

2. As described in the first report, the Panel held three preparatory meetings with the secretariat of the Commission to discuss the methodology and procedures used by the secretariat in the processing of the first instalment of category "A" claims. The same methodology and procedures have been applied to the second and third instalments of claims. The Panel held one substantive session to review claims in the third instalment from 14 to 16 March 1995.

I. CATEGORY "A" CLAIMS IN GENERAL

3. Category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991. For a more detailed description of the nature of category "A" claims, the Claim Form "A" and the amounts that can be claimed under this category, reference is made to Part I of the first report.

II. EVIDENTIARY STANDARD APPLICABLE TO CATEGORY "A" CLAIMS

4. The evidentiary standard applicable to category "A" claims is stated in Decision 1 and more specifically in article 35 (a) of the Rules. As is explained more fully in paragraphs 17-21, all of the claims in the third instalment were verified to meet this standard by way of computerized matching of the claims in question against an Arrival/Departure Database that was developed from documentary evidence such as Arrival/Departure Records made available by various governments and international organizations. The Panel therefore was not required to review evidence attached to those claim forms.

III. METHODOLOGY FOR PROCESSING CATEGORY "A" CLAIMS

A. Several methods

5. Part III.A. of the first report sets out the different methods envisaged by the Rules for the verification of category "A" claims, i.e., matching, sampling and additional verification "as circumstances warrant". The computerized matching of the claims against the Arrival/Departure Database has been the methodology relied upon for the verification of claims in the third instalment.

6. A first matching run was performed for all claims that were filed with the Commission before 1 July 1993. A second matching run was subsequently performed for all claims the verification of which had not been attempted in the context of the first instalment, i.e., claims filed later than 1 July 1993. (For the number of claims and the country-wise composition comprising the first instalment, see Part III.B. of the first report). Also included in the second matching run were claims that were filed prior to 1 July 1993 but which were affected by technical deficiencies preventing them from being considered for the first instalment, provided that such deficiencies had been remedied in time to permit inclusion in the second matching run. Claims included in the second matching run were verified against two additional sets of Arrival/Departure Records that had not been

used in the first run because of technical problems, i.e., those provided by the Governments of Iran and Jordan.

B. The third instalment of category "A" claims

7. In determining the total number of claims and the country-wise composition comprising the third instalment of category "A" claims the Panel applied the general guidelines set forth by the Governing Council for the composition of the several instalments of category "A" claims taking into account various considerations such as the total number of claims submitted by different countries, the dates of their submission, the estimate of time it would take to process claims even through expedited procedures, and the estimate of the funds that might be available. The Panel's recommendations as set out in paragraphs 22-25, for the payment of claims listed in the Summary Table attached to this report, are made according to such criteria and procedures, as elaborated below.

8. The Panel reviewed and recommends for payment in the third instalment all of the claims that had been successfully verified in the second matching run and had not been included in the second instalment.

9. The number of claims per submitting country that the Panel recommends for payment in the context of this instalment is listed in the column "Number of Claims Recommended for Payment" of the Summary Table attached to this report.

IV. THE PROCESSING OF THE THIRD INSTALMENT OF CLAIMS

A. Processing by the secretariat

10. All of the claims contained in the third instalment were subjected to the processes described in Part IV.A. of the first report.

B. Validation

11. As was the case for the claims contained in the first and second instalments, before matching the claims in the third instalment against the Arrival/Departure Database, the claims were passed through a preliminary computerized screening process hereinafter referred to as "validation". The purpose of validation is threefold. First, some aspects of the format of the claims are checked. Second, the Iraqi claimants are separated from the non-Iraqi claimants. Third, the validation programme checks whether there are any duplicate claims in the "A" claims category.

12. As explained more fully in Part IV.B.3. of the first report, the Panel instructed the secretariat to analyze further the claims that have been identified and separated as "possible duplicates" to confirm whether such claims are indeed duplicates. The secretariat is in the process of examining those claims. In view of the considerations outlined in this Part of the first report, the Panel recommends that governments keep an accurate record of the persons to whom amounts awarded are paid in order to minimize the risk of multiple recovery on the basis of a duplicate "A" claim.

C. Other issues

1. Departure date outside the jurisdictional period

13. As in the first and second instalments, claimants in the third instalment who stated in their claim form a "date of departure" outside the period from 2 August 1990 to 2 March 1991, were deemed by the Panel to have misinterpreted the meaning of the term "date of departure" and, therefore, were not dismissed on the basis of such a date if the claimants in question nevertheless matched against an Arrival/Departure Record establishing departure within the jurisdictional period.

2. Limitations on claiming in more than one category

14. The Governing Council's decision on "Multi-Category Claims"[4]/ establishes that claimants who have selected a higher amount under category "A" (US$4,000 or US$8,000) and have also

filed a claim in category "B", "C" or "D", will be deemed to have selected the corresponding lower amount under category "A". With regard to this decision, the Panel in its second report (see Part IV.C.2.) had drawn the attention of the Governing Council to the prejudice caused by that decision to the claimants who had submitted category "A" claims and had abided by the rules which required them to agree not to file claims in another category. The Panel had expressed the view that the Governing Council may wish to review this matter, and had indicated the lines along which a fair solution could be achieved by an appropriate decision of the Governing Council which would maintain "a just balance between such claimants and those who will benefit from the application of Decision 21".

15. The Panel notes that at its sixteenth session, when approving the second report, the Governing Council, inter alia, stressed that it shared the Commissioners' concern that no claimant who properly followed the Commission's procedures in submitting a category "A" claim should be prejudiced as a result of the application of Decision 21. The Governing Council decided to keep under advisement, and at an appropriate time consider, whether the Commission's procedures for making payments to successful claimants should be implemented as proposed by the Commissioners, i.e., that all successful claimants who had submitted category "A" claims for higher amounts but had not submitted claims in any other category, receive full payment of those amounts, pursuant to the terms of Decision 17, before any additional amounts beyond the initial US$2,500 are paid to the category "A" claimants who submitted claims for such higher amounts but had also filed claims in other categories. In considering this matter, the Governing Council would take into account the views of the secretariat regarding this proposal's feasibility and implications.

3. Interest

16. On the basis of the considerations formulated in Part IV.C.3. of the first report, the Panel reiterates its recommendation that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council Decision on "Awards of Interest"._/ With respect to

category "A" claims, the phrase "the date the loss occurred" in Decision 16 should be interpreted to be 2 August 1990.

D. Computerized verification of category "A" claims in the third instalment

1. Departure from Kuwait and Iraq during the Gulf crisis

17. With regard to the background information on the number of departees and the circumstances of their departure, reference is made to Part IV.D.1. of the first report.

2. The computerized matching

18. The third instalment of claims was subjected to the same computerized matching process that had been used for the verification of the first and second instalments of category "A" claims. The goal of this computerized verification process was to determine whether a given claimant appears in one or more of the records that constitute the Arrival/Departure Database and which the Panel found to establish departure from Kuwait or Iraq during the relevant jurisdictional period. In order to achieve this goal, the secretariat used the same specially designed software as in the first instalment. The general characteristics of this computerized process and the software supporting it were reviewed by and met the approval of the Panel; they are described in detail in Part IV.D.4. of the first report.

3. The Arrival/Departure Records

19. The Arrival/Departure Records used by the secretariat for the computerized verification of claims in the third instalment include all those utilized for the verification of claims in the first and second instalments and referred to in Part IV.D.2. of the first report and Part IV.D.3. of the second report.

4. Evidentiary value of the various records

20. The evidentiary value of the Arrival/Departure Records provided by a number of governments and international organizations was determined by the Panel in Part IV.D.3. of the first report and Part IV.D.4. of the second report.

21. The Panel, thus, determined that a claimant who had matched against one or more of these records met the applicable evidentiary requirements and was entitled to compensation.

V. RECOMMENDED COMPENSATION FOR THE THIRD INSTALMENT OF CATEGORY "A" CLAIMS

22. Pursuant to article 37 (e) of the Rules, the Panel hereby presents its final recommendations on the claims comprising the third instalment of category "A" claims.

23. Having considered the results of the verification of claims accomplished through computerized matching and further having considered all relevant circumstances and materials available with the Commission, the Panel recommends for payment of compensation 132,080 claims submitted by 16 countries. The total recommended amount of compensation for the third instalment comes to US$517,650,500.

24. The Panel records that claims that could not be included in the third instalment due to such factors as defective format or possible duplication are expected to receive consideration when subsequent instalments are processed.

25. The attached Summary Table lists on a country-by-country basis the number of claims for which payment is recommended and the total recommended amount of compensation. A table containing the breakdown of the amounts to be paid to each individual claimant will be provided to each respective country.

Geneva, 23 March 1995

(Signed) Kamal Hossain
Chairman

(Signed) Matti Pellonpää
Commissioner

(Signed) Rafael Rivas-Posada
Commissioner

Notes

[1]/ The recommendations concerning the first instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", (S/AC.26/1994/2), (hereinafter referred to as the "first report"). General information regarding the establishment of the United Nations Compensation Commission in the aftermath of the Gulf crisis as well as the composition of the Panel are contained in the introduction to the first report. The recommendations concerning the second instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", (S/AC.26/1995/2), (hereinafter referred to as the "second report").

[2]/ S/AC.26/1992/10, article 37 (e) requires that "[e]ach Panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim".

[3]/ S/AC.26/1991/1, (hereinafter referred to as "Decision 1").

[4]/ S/AC.26/Dec.21 (1994), (hereinafter referred to as "Decision 21").

[5]/ S/AC.26/1992/16, (hereinafter referred to as "Decision 16").

Annex

Category "A" Claims Recommended for Payment in the Third Instalment (Summary Table)

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Australia	7	$35,000.00
Bahrain	1	$2,500.00
Egypt	63,064	$174,295,500.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	245	$1,016,000.00
India	4,083	$16,173,500.00
Iran	9,175	$68,089,000.00
Jordan	19,670	$93,155,000.00
Korea, Republic of	8	$20,000.00
Kuwait	20,739	$104,650,500.00
Pakistan	43	$180,500.00
Philippines	1,542	$6,039,500.00
Russian Federation	19	$112,000.00
Sri Lanka	13,250	$52,929,500.00
Sudan	11	$43,500.00
United States of America	38	$168,500.00
Vietnam	185	$740,000.00
Total	132,080	$517,650,500.00